Supreme Court, U.S.
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No. 02 755

IN THE

Supreme Court of the United States

CITY OF GARLAND, TEXAS,

Petitioner,

v.

DOUGLAS R. LARSON,

Respondent.

On Petition for Writ of Certiorari
To the United States Court of Appeals
For the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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35 pp

Question Presented for Review

1. Did the court of appeals, having determined that the record was factually insufficient to support the district court's award of sanctions, err by rendering judgment and not remanding the case to the district court for further proceedings consistent with its opinion?

Parties to the
Proceedings in the Court of Appeals

City of Garland, Texas
Brian England
Douglas R. Larson

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Citations to Reports of Opinions and Orders Entered

The decision of the United States Court of Appeals for the Fifth Circuit (Appendix, pp. A-2 through A-11) is unreported.

The order of the United States Court of Appeals for the Fifth Circuit denying rehearing (Appendix, pp. A-12 through A-13) is unreported.

The order of the Magistrate Judge for the United States District Court for the Northern District of Texas (Appendix, pp. A-14 through A-16) is unreported.

The order of the United States District Court for the Northern District of Texas (Appendix, pp. A-17 through A-19) is unreported.

Statement on Jurisdiction

The judgment of the Court of Appeals was entered on July 15, 2002. The Court of Appeals entered an order denying rehearing on August 15, 2002. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(2).

Statutes Involved in the Case

None.

Statement of Facts

The underlying case was a civil rights lawsuit involving alleged violations of Plaintiff Piedad Gonzales' rights in connection with her stop and arrest by Defendant Brian C. England ("England"), a police officer for the City of Garland, Texas (the "City"). The matter was tried on June 5, 2000.

Immediately prior to trial, Plaintiff's counsel, Douglas R. Larson ("Larson") issued a trial subpoena compelling the testimony of Ronald Jones ("Jones"), an attorney for the Garland City Attorney's office who represented England. (Record Vol. 2 at pp. 320-21; Supp. Record Vol. 4 at p. 22). At the pre-trial conference, the City objected to Jones being called to testify as a witness. (Supp. Record Vol. 4 at pp. 17-18).

Immediately prior to Jones' testimony, Larson told the district court that he needed Jones' testimony to establish that subpoenas for several deposition witnesses were not complied with and that Jones did not produce the information requested in the subpoenas. (Record Vol. 6 at p. 181). Larson wholly failed to demonstrate these points through Jones' testimony. (*See* Record Vol. 6 at pp. 186-99) The record, however, does not reflect that any subpoenas were actually served upon Jones or the deposition witnesses. (Supp. Record Vol. 4 at p. 42). Instead, the record showed that Jones voluntarily provided

Larson with the available information without subpoena. (Record Vol. 6 at pp. 186-89). Furthermore, the need for Jones' testimony regarding the allegedly missing documents could not have advanced Larson's client's cause in any event, because the documents that were allegedly "missing" would have harmed the plaintiff's case and helped the defendant.

Accordingly, the City and England filed a motion for sanctions against Larson, asserting that Larson's conduct in calling Jones to testify was in bad faith and involved misrepresentations to the district court. (Record Vol. 2 at pp. 509-93). The district court referred the matter to the magistrate judge, who awarded sanctions against Larson. (Record Vol. 3 at p. 1; Appendix at pp. A14-A16). Larson objected to the magistrate judge's findings and moved for a stay, which was granted, pending the determination of his objections. (Record Vol. 3 at p. 264). The district court affirmed the magistrate judge's award of sanctions, but increased the amount of the sanction. (Appendix at pp. A17-A19).

Reason For Granting The Petition

The Court should grant this Petition so as to clearly delineate and protect the right of the district court to manage the cases and attorneys before it. The decision of the court of appeals to reverse and

render this matter has deprived the district court of the opportunity to clarify its reasons for imposing the sanctions.

An order granting sanctions is properly reviewed under an abuse of discretion standard, and if possible and reasonable, the district court's actions are reviewed in a favorable light. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); *Natural Gas Pipeline v. Energy Gathering*, 2 F.3d 1397, 1410 (5th Cir. 1993). Under an abuse of discretion standard the reviewing court should give great deference to an order imposing sanctions. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990); *Whitehead v. Food Max of Mississippi, Inc.*, 277 F.3d 791, 793 (5th Cir. 2002). The basis for this rule is that "the district court is better situated than the court of appeals to marshal the pertinent facts. . . ." *Whitehead*, 277 F.3d at 793 (citation omitted).

Reversal of the decision of the district court should come only if the ruling is based "on an erroneous view of the law, or on a clearly erroneous assessment of the evidence." *Cooter*, 496 U.S. at 405. In conducting a review of a sanctions order, a court's role is to review the district court's ruling for an abuse of discretion rather than conduct a de novo review of the record. "[I]n reviewing sanctions imposed under the district court's various sanctioning powers, we will not suppose to substitute our judgment for that of the trial court, when it comes to

enforcement of acceptable standards of litigation conduct." *Topalian v. Ehrman*, 3 F.3d 931, 935 (5th Cir. 1993).

In the case at bar, the court of appeals focused on the assessment of the evidence by the district court. In the absence of an explanation from the district court of the basis for affirming the magistrate judge's order, the court of appeals expressed concern that the district court's allowing Jones to testify was inconsistent with the subsequent sanctions ruling. This supposed inconsistency led the court of appeals to determine that the sanctions issue was, for all intents and purposes, mooted at the moment the district court ruled on the City's pretrial objection to Jones' testimony. This purported inconsistency led the court of appeals to reverse and render the matter.

It was not the determination of the appeal, but the rendition of the matter that was error. The courts stand in a certain relationship to one another, such that the district courts retain the basic responsibility of fact-finding, while courts of appeal are the arbiters of the law. *See Pullman-Standard v. Swint*, 456 U.S. 273, 291-92 (1982); *De Marco v. United States*, 415 U.S. 449, 450 (1974). Accordingly, when a court of appeals makes a determination based upon a point of factual insufficiency, the matter is then returned to the district court for further proceedings - that is, the court of appeals does not get involved in the factual

determinations that are the province of the district court. *See Maine v. Taylor*, 477 U.S. 131, 145-46 (1986). Where it is unclear whether the factual circumstances not appearing of record may support a particular action, the matter should be remanded, unless the record dictates that there can be only one resolution of the factual issue. *Pullman-Standard*, 456 U.S. at 292; *See Kelley v. Southern Pacific Co.*, 419 U.S. 318, 331 (1974).

In the case at bar, if the findings of the district court were factually inadequate to support the district court's order, the court of appeals was obligated to remand the matter for further proceedings. *See Pullman-Standard*, 456 U.S. at 291-92; *Icicle Seafoods, Inc. v. Worthington*, 475 U.S. 709, 714 (1986); *Topalian v. Ehrman*, 3 F.3d 931, 938 (5th Cir. 1993). When the court of appeals was unable to discern a sufficient factual basis for the sanctions, it should have permitted the district court an opportunity to revisit the matter and clarify the basis for the sanctions. Although the court of appeals believed that the award of sanctions was inconsistent with the district court's prior actions, the district court might be able to explain a rational basis for its decision (e.g. - that it believed Larson had misrepresented the underlying facts to the district court). The court of appeals took the position that the referral of the motion for sanctions to the magistrate did not make

sense and that the district court having permitted Larson to call Jones to testify essentially mooted the issue at hand. However, the matter of the sanctions was a complex issue and should not be dismissed as a simple inconsistency. The district court may have referred the sanctions matter to the magistrate in order to get a "second" or independent opinion as to Larson's conduct, and the actions of the district court in allowing Jones to testify and thereafter approving sanctions against Larson, strongly suggests that the district court had some significant basis for approving the sanctions, perhaps believing that it had been misled by Larson.[1] This is, admittedly, speculation, but highlights that a remand would have been particularly appropriate here, where the matter concerns the ability of the district court to protect its authority and integrity through the discipline of those who appear before it. Certainly, the circumstances are not such that the record commands only one resolution of the factual issue; the district court's order was simply insufficient to meet the legal standard for sanctioning Larson, but the facts known to the district court may still warrant such sanctions.

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[1]In fact, the district court not only affirmed the magistrate judge's award of sanctions, but increased the amount awarded by the magistrate judge.

Conclusion

The City seeks review in this matter solely to request that the Court reverse the court of appeals and direct that the court of appeals modify the disposition of this appeal to specify a remand to the district court for further proceedings. The Court should grant the petition so as to clarify and delineate the right of district courts to protect their authority and discipline those that appear before them.

Respectfully submitted,

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